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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,287	02/10/2004	David M. Carrizales JR.		1166

42794 7590 10/24/2005

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EXAMINER

CONLEY, SEAN EVERETT

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 10/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/775,287

Applicant(s)

CARRIZALES, DAVID M.

Examiner

Sean E. Conley

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/28/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 2, and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Turro (U.S. Patent No. 3,959,642).

Regarding claim 1, Turro discloses a device having an illuminating element and an aromatic material burning element comprising: an incense housing member (35 and 49 together) disposed in a base member (11 and 16 together) having a light member (24) therein; said incense housing member (35 and 49 together) having a wall, a closed bottom (36) and an open top (57) forming a chamber (56); and an incense holder (45) for retaining an incense element (48) in said chamber (see figures 1-5; col. 1, line 60 to col. 2, line 62).

Regarding claim 2, Turro discloses that the base member (11 and 16 together) has a cavity (15) therein with a light source (24) interconnected with a power source (electrical plug (29) attached to a wall socket) and a switch (26) (see figure 2; col. 1, line 63 to col. 2, line 25).

Regarding claim 4, Turro discloses a base (11 and 16 together) having an upper cavity (upper end of (16)) for receipt of said incense housing member (35 and 49

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together); and a lower cavity (lower end of (16)) with a light member (24) disposed therein (see figure 2).

Regarding claim 5, Turro discloses that the upper cavity (upper end of (16)) has a step (top edge of (16)) for supporting the incense housing member (35 and 49 together).

Regarding claim 6, Turro discloses a mounting element (19) positioned for attachment of a light source (24) to direct light upwardly into and out of said incense housing member (see figure 2; col. 2, lines 11-25).

Regarding claim 7, Turro discloses an incense housing member (35 and 49 together) that is a tubular shape (see figure 1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Turro as applied to claim 2 above, and further in view of Herold (U.S. Patent Application Publication US 2004/0003821 A1).

Turro fails to teach a power source that is a battery. Harold discloses a device with an incense holder (80) that is supported by enclosure (40) in a position above a tray (10) so that ashes from burning incense fall into the tray. The device further includes an illumination means (bulb (30)) that is energized by power from a utility, as shown in figures 3-5, or from a battery source, as shown in figure 2 (see figures; paragraph [0028]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Turro and replace the power source (electrical plug (29) attached to a wall socket) with a functionally equivalent viable alternative means such as a battery as taught by the device to Herold.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Turro as applied to claim 1 above, and further in view of Hsiao.

Turro fails to teach an incense housing member (35 and 49 together) that is transparent. Hsiao discloses an electric incense burner structure that includes a burner housing (20) and a lid (10) both of which are transparent so that the user can see at any time whether the essence (incense) inside has been volatilized (see figures 3 and 4; col. 2, lines 57-60).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Turro and make the incense housing member (35 and 49 together) out of a transparent material as taught by Hsiao so that the user can visually determine when and if the incense has been volatilized.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Turro as applied to claim 6 above, and further in view of White (U.S. Patent No. 2,131,460).

Turro fails to specifically teach the color of the light source within the base. White discloses an incense burner that comprises a base having a light bulb (10) providing illumination to simulate an erupting volcano using a flame colored light bulb and a burnable incense element (7) for providing incense smoke (see figure; columns 1 and 2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Turro and use a colored bulb such as a flame colored bulb as taught by White in order to provide a desired visual effect such as simulating a flame.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E. Conley whose telephone number is 571-272-8414. The examiner can normally be reached on M-F 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 17, 2005

SEC

X.E.C.

  
JOHN KIM  
SUPERVISORY PATENT EXAMINER